

SENATE RECORD VOTE ANALYSIS

104th Congress
1st Session

Vote No. 58

January 27, 1995, 12:16 p.m.
Page S-1654 Temp. Record

UNFUNDED MANDATES/Limits on Raising Points of Order

SUBJECT: Unfunded Mandate Reform Act of 1995 . . . S. 1. Kempthorne motion to table the Glenn amendment No. 197.

ACTION: MOTION TO TABLE AGREED TO, 53-43

SYNOPSIS: Pertinent votes on this legislation include Nos. 15-41, 43-45, 47-57, and 59-61.

As reported by the Governmental Affairs Committee and the Budget Committee, S. 1, the Unfunded Mandate Reform Act of 1995, will create 2 majority (51-vote) points of order in the Senate. The first will lie against the consideration of a bill or joint resolution reported by an authorizing committee if it contains mandates and if Congressional Budget Office (CBO) cost estimates on those mandates are unavailable. The second point of order will lie against the consideration of a bill, joint resolution, motion, amendment, or conference report that will cause the total cost of unfunded intergovernmental mandates in the legislation to exceed \$50 million.

The Glenn amendment would allow the Senate points of order on mandates that this Act will create to be raised only just prior to final passage of a bill or resolution, or during the consideration of conference reports. In the later case, though, points of order could only be raised against mandates that were not included in the Senate-passed bill or that differed from the Senate-passed language.

Debate was limited by unanimous consent. Following debate, Senator Kempthorne moved to table the Glenn amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

Those favoring the motion to table contended:

If Members propose amendments that contain unfunded intergovernmental mandates, we think they should be ready and willing to defend them. Further, all Members have a right to know, up front, if an amendment contains an unfunded mandate, and they should have the opportunity to vote on whether they approve of that lack of funding. It is not enough to wait until the consideration of a bill

(See other side)

YEAS (53)			NAYS (43)		NOT VOTING (4)	
Republicans (51 or 100%)	Democrats (2 or 4%)		Republicans (0 or 0%)	Democrats (43 or 96%)	Republicans (2)	Democrats (2)
Abraham	Hutchison	Exon		Akaka	Gramm- ²	Inouye- ²
Ashcroft	Inhofe	Heflin		Baucus	McCain- ²	Johnston- ²
Bennett	Jeffords			Biden		
Bond	Kassebaum			Bingaman		
Brown	Kempthorne			Boxer		
Burns	Kyl			Bradley		
Chafee	Lott			Breaux		
Coats	Lugar			Bryan		
Cochran	Mack			Bumpers		
Cohen	McConnell			Byrd		
Coverdell	Murkowski			Campbell		
Craig	Nickles			Conrad		
D'Amato	Packwood			Daschle		
DeWine	Pressler			Dodd		
Dole	Roth			Dorgan		
Domenici	Santorum			Feingold		
Faircloth	Shelby			Feinstein		
Frist	Simpson			Ford		
Gorton	Smith			Glenn		
Grams	Snowe			Graham		
Grassley	Specter			Harkin		
Gregg	Stevens					
Hatch	Thomas					
Hatfield	Thompson					
Helms	Thurmond					
	Warner					

EXPLANATION OF ABSENCE:

1—Official Business
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:

AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

is complete and then vote on whether one supports or opposes the cumulative effect of unfunded intergovernmental mandates that have been added by amendments. Doing so would let Members irresponsibly offer amendments without carefully considering their costs. Also, other Senators who may favor the unfunded mandates in some amendments but not in others would be forced to vote on all those amendments at once, yes or no. Under the Glenn amendment, if they voted "no," further consideration of the bill would be out of order.

Supporters of the Glenn amendment contend that this process would be true to the original intent of the bill, and offer as proof the manner in which the bill will treat mandates proposed by authorizing committees. However, the fact that those mandates will be considered together rather than separately has no bearing on the treatment that should be accorded to mandates in amendments. Amendments are offered sequentially, and are not weighed one against another; the provisions of committee bills, on the other hand, are crafted to form a cohesive whole. Mandates that are in committee proposals have already been balanced against each other, so it is appropriate to consider their costs in total rather than separately. Because the mandates that are in amendments have not been weighed against the mandates in the bill or in other amendments, though, Senators should be given the opportunity of voting on them individually.

Unlike our colleagues, we do not think this opportunity will cause great delay. First, points of order are not self-executing--they must be raised, and obviously they not always will be. Second, the series of procedural votes on each amendment that our colleagues have suggested will occur will not--a point of order will only lie against amendments containing unfunded mandates that will cause the bill's threshold to be exceeded. They will not lie against amendments for containing intergovernmental mandates, nor will they lie against amendments for containing mandates that will increase the total cost of mandates in a bill over \$50 million. They will only lie against unfunded intergovernmental mandates that cause the \$50 million threshold for unfunded mandates to be exceeded. Each amendment will have to overcome only one point of order to avoid falling.

The current drafting of S. 1 is appropriate. The Senate should have the opportunity to vote on a committee's proposed unfunded intergovernmental mandates, and it should have the same opportunity to vote on a Senator's proposed unfunded intergovernmental mandates. We imagine that this requirement will make Senators more careful in making proposals to burden State, local, and tribal governments. We are certain most of our colleagues will agree, and will join us in defeating this amendment.

Those opposing the motion to table contended:

The Glenn amendment would allow a point of order to lie against a bill in only two places. First, one could be raised just prior to final passage, and second, one could be raised against new matter in a conference report when it is laid before the Senate. By limiting the occasions when points of order could be raised, the Glenn amendment would prevent S. 1 from being used as a new filibuster tool, but at the same time it would retain the essential purpose of the bill, which is to make it possible to force the Senate to consider the costs of new mandates it imposes.

Under S. 1, points of order will lie against the total cost of mandates in a bill as reported, but will lie against the individual costs of amendments as they are proposed. Thus, for example, if a bill as reported contains six unfunded intergovernmental mandates that will each cost \$10 million in a given year, a point of order will lie against it for being unfunded. Floor amendments, on the other hand, will be considered individually. An amendment with a proposed unfunded intergovernmental mandate will be subject to points of order for containing a mandate, for exceeding the threshold, and for being unfunded. On each of these points of order, the Parliamentarian will have to rule, the ruling will have to be appealed, and there will have to be votes on those appeals. In all, 9 extra procedural steps may conceivably have to be completed on amendments that come before the Senate. In our minds, the potential for abuse of these procedural requirements is enormous. S. 1 may be used less to consider the costs of mandates and more to delay the passage of legislation, however meritorious.

The Glenn amendment would make it impossible to consider these points of order over and over for each amendment. Instead, it would allow a point of order only to be raised when the Senate has finished amending a bill and is ready to vote on final passage, or when a bill returns from conference with new mandate language that was not in the Senate-passed bill. Allowing points of order at those points would retain the essential purpose of S. 1, which is to make it possible to consider the total costs of mandates in proposed bills. Thus, without weakening the bill, the Glenn amendment would prevent the abusive use of points of order under S. 1. We support this amendment, and urge our colleagues to join us in voting against the motion to table.